# COMMITTEESHIP GUIDEBOOK

Prepared by: The Public Trustee of Manitoba
13th Floor, 405 Broadway
Winnipeg, MB R3C 3L6

September, 1999

**NOTE:** This Guidebook is not a legal document. It contains general information and is provided for the convenience and guidence of persons who have been appointed as committees. If interpretation problems occur, please refer to your lawyer or the appropriate legislation.

Manitoba Justice

# COMMITTEESHIP GUIDEBOOK

## TABLE OF CONTENTS


| CHAPTER | | PAGE |
|---|---|---|
| I | INTRODUCTION | |
| | A. What is a committee? | 3 |
| | B. When is a committee necessary? | 3 |
| II | WHO CAN APPLY? | 3 |
| III | WHO MUST BE NOTIFIED? | 4 |
| IV | THE PUBLIC TRUSTEE'S ROLE | |
| | In Private Committeeship Applications | 4-5 |
| V | THE COMMITTEESHIP ORDER | 6-10 |
| VI | POSTING THE BOND | 11-17 |
| VII | FILING THE INVENTORY | 18-21 |
| VIII | DUTIES AND POWERS OF THE COMMITTEE | |
| A. | Committee of Property | |
| | 1. General Duties | 22 |
| | 2. Specific Transactions | 23-26 |
| | 3. Things To Do | 26-27 |
| | 4. Professional Assistance | 27-28 |
| B. | Committee of Both Property and Personal Care | |
| | 1. General Duties | 25-36 |
| | 2. Specific Matters | 28-29 |
| | 3. Things To Do | 30 |
| C. | Provisions Respecting All Committees | 30 |
| IX | ACCOUNTING BY THE COMMITTEE | |
| | A. Procedure | 31-42 |
| | B. If the Accounts are Approved | 43-44 |
| | C. If the Accounts are not Approved | 43-44 |
| X | COMMITTEE'S COMPENSATION | 45 |
| XI | WHEN DOES A COMMITTEE'S AUTHORITY END? | 45-46 |

## CHAPTER I

## INTRODUCTION

### A. What is a committee?

A committee is a person appointed by the Court of Queen's Bench to manage the personal or financial affairs of a person who is mentally incapable of doing so on his or her own behalf.

Private individuals who wish to be appointed as committee must apply to Court of Queen's Bench for an Order appointing them as a person's private committee. Individuals who are appointed as committees may be given authority only over the person's financial affairs, or over their financial and personal affairs when necessary.

### B. When is a committee necessary?

The appointment of a committee of the property of a person may be necessary if that person has become mentally incapable of managing his or her own affairs and had not made arrangements while competent for those affairs to be properly handled on his or her behalf. For example, if a person, while competent, signed a power of attorney, which gave another person authority to manage his or her financial affairs in the event of mental incompetence, a committee may not be necessary. However, if no such arrangements were made, banks or financial institutions may require the appointment of a committee with legal authority to deal with the person's assets.

The appointment of a committee for personal care may be necessary when the person is mentally incapable of making decisions about such personal care issues as health care, where or with whom he or she will live, or other issues of daily living. If such decisions are necessary, the court may give the committee authority over personal care in addition to authority over financial affairs. Please note that authority for personal care will only be granted in addition to authority to manage property.

## CHAPTER II

## WHO CAN APPLY?

Any person who lives in Manitoba may apply to be a committee. Usually, the person applying is a close relative or friend of the person requiring a committee. In some cases, a trust company may apply to be committee, particularly where the person's estate is large and professional financial management is required. As a last resort, the Public Trustee may be appointed as committee.

The reason a committee must be a resident of Manitoba is that the Manitoba Courts do not have jurisdiction outside the province. It is very difficult to take legal action against a committee who is not in Manitoba, if it is discovered the committee has mismanaged the assets.

More than one person may be appointed to act as committee. If joint committees are appointed, and one dies, the survivor may continue acting. The Court may also appoint an alternate committee to act in the event of the temporary absence or death of a committee.

## CHAPTER III

## WHO MUST BE NOTIFIED

In most cases, the following persons must be provided with copies of all the documents filed in Court:

(1) the person who requires a committee;

(2) the person's spouse;

(3) the person's children;

(4) any relatives of equal or greater blood relationship to the person than the proposed committee;

(5) if the proposed committee is not related to the person and there are no children or spouse, the person's parents and/or brothers and sisters.

In some cases, the Judge hearing the matter may dispense with the need to provide copies of the documents to the person requiring the committee. This may be done if medical evidence provided to the Judge establishes one of the following circumstances:

(1) that receipt of the documents would be very distressing and harmful given the condition from which the person suffers; or

(2) that the person's mental capacity is such that he or she would not understand the documents.

The Judge may also be asked to dispense with the need to provide copies to some or all of the person's relatives. This would only be done when good reason to do so could be shown. An example might be when the names or whereabouts of a relative are not known, and can't be determined after reasonable enquiries.

## CHAPTER IV

## THE PUBLIC TRUSTEE'S ROLE IN PRIVATE COMMITTEESHIP APPLICATIONS

The Public Trustee must be served with each private committeeship application at least 10 days before the date of the hearing. Copies of all of the material filed in Court must be provided to the Public Trustee. At the time of service on the Public Trustee, a fee of $100.00 must be paid to help defray the costs of the Public Trustee reviewing the application.

A lawyer in the Public Trustee's office reviews each application to determine the following:

(1) whether sufficient notice has been given to the Public Trustee and all others who are entitled to notice of the application. The Public Trustee wishes to know whether anyone objects to the appointment and, if so, the basis of the objection;

(2) whether consents of all relatives of equal or greater blood relationship than the person applying have been filed and, if not, the reason why the relative does not consent;

(3) whether the person who requires a committee has been served with the material and, if so, what his or her position is. If the person has not been served and a request has been made to dispense with service, is there proper medical evidence put forward as to why service should be dispensed with?

(4) whether the affidavit material complies with The Mental Health Act and Court of Queen's Bench Rules and whether all of the required information is included.

(5) if a request is made to appoint a committee for personal care, the applicant must establish that there is a need for decisions regarding personal care to be made.

(6) if the power to sell or otherwise dispose of real property or personal property valued at more than $10,000.00 is requested, whether sufficient evidence is included upon which the court may grant the power. Generally, the Public Trustee opposes blanket requests for this power. (For further information on this, see Chapter VIII, page 23).

(7) if approval for the sale of real property is requested, an offer to purchase and two opinions of value or appraisals should be included in the material. In most cases, the Public Trustee will oppose an application to approve the sale of property prior to an actual offer being received. The preferable procedure is to list the property for sale and accept an offer subject to court approval. (for further information, see Chapter VIII, page 24);

(8) if a bond is proposed. The court may agree to dispense with the need for a bond if the person applying is a member of the person's immediate family. (For further information about posting a bond, see Chapter VI at page 11);

(9) whether the person applying is a Manitoba resident or there should be a resident co-committee. The Public Trustee will not act as co-committee. The Public Trustee will usually oppose the appointment of a non-resident as sole committee. (See Chapter II, page 3);

(10) if there is a request to dispense with the requirement for filing an inventory or accounting, the Public Trustee will not agree. These requirements are for the protection of the person who requires a committee and should always be complied with;

(11) if the application is to replace the Public Trustee as committee, the Public Trustee considers whether good cause is shown why the application should be granted.

If, after reviewing an application, the Public Trustee has no concerns, a letter to that effect will be sent to the lawyer for the proposed committee.

If there are concerns about the application, an attempt will be made to discuss the concerns with the lawyer and resolve them prior to the hearing.

If the concerns cannot be resolved, counsel for the Public Trustee will proceed in one of the following ways:

(1) if there is no opposition to the appointment, but there are concerns of a procedural nature, a letter will be written to the lawyer, with a copy to the court setting out the concerns. In most cases, the Public Trustee will not be represented at the hearing of the application;

(2) if concerns have been expressed about a proposed committee's ability or actions, but there is insufficient evidence to oppose the application, the Public Trustee may request a bond be posted or the committee's accounts be served periodically on the Public Trustee. The Public Trustee may be represented at the hearing of the application or may communicate the request by letter to the lawyer and the court;

(3) if there are substantive concerns about the appropriateness of the proposed committee or about the application, the Public Trustee may oppose the application. The matter will proceed to Court on a contested basis.

## CHAPTER V

## THE COMMITTEESHIP ORDER

At the court hearing, the judge reviews the material filed and listens to the submissions of the lawyer for the committeeship applicant, and anyone else who appears. It is the judge's role to decide whether to appoint the committee, and if so, to set the terms and conditions under which the committee must act.

The judge must be satisfied that a committee is indeed necessary. The following determinations must be made:

1. That the person in question is incapable of managing his or her property because of mental incapacity;

2. That decisions concerning that property are required on the person's behalf;

3. Whether the person has made a valid enduring power of attorney;

4. If a request is made to appoint a committee for personal care, whether the person is incapable of personal care;

5. That decisions concerning personal care need to be made;

6. whether the person has made a health care directive appointing a proxy; and

7. Whether the person's incapacity is due exclusively to a mental disability as defined in *The Vulnerable Persons Living With a Mental Disability Act*. If so, the application must be made in accordance with the provisions of that Act.

The original order is kept on file at the court office. The committee gets a copy and may obtain certified copies from the court for a small fee.

The committee must provide copies of the Order to the following persons:

(a) the person requiring a committee, unless the Judge has dispensed with service on him or her;

(b) each person served with the original application; and

(c) any other person as required by the judge.

The order is the proof that the committee has the authority to do certain things on behalf of another person, and is, therefore, a very important document.

A committee must act in accordance with the Court Order. Failure to do so could result in the committee being removed or even held in contempt of court. It is therefore, important to understand the Order and what it says.

A sample Orders is attached.
An explanation of each paragraph is in the margin.

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: MARY SMITH

BETWEEN: JOHN SMITH,

Applicant,

- and -

MARY SMITH,

Respondent.

---

ORDER APPOINTING A COMMITTEE OF PROPERTY
(OR)
ORDER APPOINTING A COMMITTEE OF BOTH PROPERTY AND PERSONAL CARE

---

NOTICE TO THOSE SERVED WITH THIS ORDER

This Order contains provisions requiring the committee to file an inventory of the respondent's estate, and to pass his or her accounts before the court at specific intervals. Any person served with the application for the appointment of a committee is entitled to be given notice by the committee of the motion to the court to pass the accounts. The committee may also request court approval of the proposed compensation for the committee and approval of the legal fees to e paid to the committee's lawyer, when the accounts are passed.

Brown & Associates
Barristers and Solicitors
123-4th Street
Anytown, Manitoba
R2J 3K4

Betty Brown
Telephone: 123-4567

Solicitors for the Applicant

This is the cover page. It identifies the document, the parties and the lawyers who filed the Order. It also contains a notice to anyone who was served with the application for committeeship that they are entitled to notice of the motion to pass accounts or approve compensation. See pg. 10, paragraph 6 & 7.

THE QUEEN'S BENCH
Brandon Centre

THE HONOURABLE )
) Tuesday, the 5th day of December,
MR. JUSTICE JONES ) 1999

IN THE MATTER OF: Section 71 of The Mental Health Act,

AND IN THE MATTER OF: MARY SMITH

BETWEEN: JOHN SMITH,
Applicant,

- and -

MARY SMITH,

Respondent.

**ORDER APPOINING A COMMITTEE OF PROPERTY**
(OR)

**ORDER APPOINTING A COMMITTEE OF BOTH PROPERTY AND PERSONAL CARE**

This part of the Order names the parties involved and indicates when, where and by whom the Order was granted.

This is the introduction to the Order. It sets out what kind of Order was requested and the information that was filed in support. The provisions regarding personal care are only added if the judge granted that authority.

THIS APPLICATION made by John Smith for an Order declaring that Mary Smith, the respondent, because of mental incapacity is incapable of managing her property (and of personal care) and for an order *inter alia* appointing the said John Smith as the committee of property (or as committee of both property and personal care) of the respondent, without notice to the respondent, was heard this day at the Court House, in the City of Brandon, in Manitoba.

ON READING the affidavits of John Smith, William George Hamm and Bernard David Shaw, and on hearing the submissions of counsel for the said John Smith:

1.This is the declaration that the person is incapable of managing his or her property (or property and personal affairs).

1. THIS COURT DECLARES that the respondent, because of mental incapacity, is incapable of managing her property (and of personal care) and needs decisions to be made on her behalf about that property (and concerning personal care)

2. THIS COURT ORDERS that John Smith be and is hereby appointed committee of the property of the respondent (or of both property and personal care of the respondent)

...upon giving security in the form of a bond, furnished by a person authorized under *The Insurance Act* to enter into a contract of guarantee insurance, in the sum of $_____, as approved by the Master.

[OR]

...upon giving security in the form of a personal bond in the sum of $_____, with sureties _____(name of sureties)_____, as approved by the Master.

[OR]

...upon giving security in the form of a personal bond, without sureties, in the sum of $_____, as approved by the Master.

[OR]

...without security.

2. This paragraph names the committee, and specifies whether security or a bond is necessary. If security is ordered, the committee's authority does not begin until the security is posted and approved by a Master of the Court of Queen's Bench.

3. THIS COURT ORDERS that the committee file with the court the security required under paragraph 2 prior to exercising any functions as committee (and continue to pay any premiums that are required to maintain any bond in effect, until otherwise ordered by the court or until approval of accounts is given at a final passing of accounts in respect of the committeeship).

3. Paragraph 3 is only required when security or a bond is required under Paragraph 2.

4. THIS COURT ORDERS that the committee immediately take custody or control of all property that is owned by the respondent or is property of which the respondent is entitled to have possession and immediately collect in and receive all debts that are owed to the respondent, and for these purposes all such property and debts are vested in the committee.

4. This paragraph provides the authority for the committee to take control of the property.

[Where application is made for additional powers under section 81:]

5. THIS COURT ORDERS that the committee may exercise, in addition to the powers provided under sections 80 and 90 of the Act,

...all the powers provided under section 81 of the Act.

[OR]

...the following powers under section 81 of the Act: [indicate the powers authorized]

(a) To sell Mary Smith's 1998 Chevrolet Cavalier motor vehicle to Bill Brown for $13,000.00; and

(b) To sell Mary Smith's interest in the property legally described as follows:

5. This paragraph provides for any additional authority granted by the court under s.81 of the Act. In this example, the committee is granted authority to sell a car and real property. In some cases, no additional authority may be granted while in others, additional powers may be included.

E ½ Lots 23 & 24, Plan 194, B.L.T.O

to XYZ Corporation upon the terms and conditions of the offer to purchase real estate from XYZ Corporation and dated September 1, 1999.

6. THIS COURT ORDERS that the committee shall, within one month from the date of signing of this Order, file a duly verified true inventory in the terms and form prescribed under Rule 72.03 of the rules of this court, for approval by the Master.

6. & 7. These paragraphs provide for the filing of the inventory and passing the committee's accounts. Further details about these requirements are contained in Chapters VII and IX.

7. THIS COURT ORDERS that the committee shall within one year from the date of signing this Order make a true and just account before the Master and thereafter make a like accounting no later than the 60th day following each anniversary date of the signing of this Order and the Master is authorized to fix costs of the passing of accounts, the compensation, if any, to be paid to the committee and the legal fees, if any, to be paid to the lawyer acting on behalf of the committee, and for such purposes the accounts are by this order referred to the Master.

8. This paragraph deals with the cancellation of the security at the end of the committeeship

8. THIS COURT ORDERS that security filed with the court under paragraph 2 of this Order shall upon approval of accounts at a final passing of accounts under paragraph 7 of this order, be returned to the committee and may be cancelled by the committee.

9. This paragraph is only included if the Judge agrees that the person needing a committee or some other family member should not receive Notice of the committeeship Order

9. THIS COURT ORDERS that service on the respondent of a copy of the Notice of Application, the supporting material and a true copy of this Order be dispensed with.

10. This paragraph states who must be provided with copies of the committeeship Order.

10. THIS COURT ORDERS that service of a true copy of this Order be made on the Public Trustee within 30 days from the date of signing of this Order.

11. This paragraph sets the costs or legal fees to be paid to the lawyer from the property of the person who needs a committee. Alternatively, the Judge may refer the matter of the amount of the fees to be set by a Master when the accounts are passed.

11. THIS COURT ORDERS that the costs of and incidental to this application be fixed in the sum of $500.00, plus disbursements, to be paid by the committee out of the property of the respondent.

[OR]

...be assessed at such amount and on such basis as is appropriate in the circumstances, to be paid by the committee out of the property of the respondent, subject to review by the Master on a passing of accounts under paragraph 7.

[Date] December 15, 1999

_____

Judge or Registrar

## CHAPTER VI

## POSTING THE SECURITY

Unless the committeeship Order provides otherwise, a committee for property must provide security in the form of a bond to the court. The bond must have at least two sureties, and be twice the value of the incapable person's property. A surety is a person or company that guarantees payment of the amount in the bond by pledging his or her own property.

The purpose of the bond is to provide assurances to the Court that the committee will properly administer the person's financial affairs. If the property is mismanaged, the Court can look to the bond and the sureties, if any, to compensate the person whose assets have been lost.

The Public Trustee of Manitoba, when appointed as committee, is not required to post a bond or other security.

The Judge may order that a bond be posted with different terms and requirements than set out above. In some cases, especially where all interested parties agree, and the committee is immediate family of the incapable person, the Judge will dispense completely with the need for a bond. Whether or not a bond is required and the terms of the bond are completely within the discretion of the Judge.

Individuals with assets valued at an amount greater than the value of the bond may act as sureties. Alternatively, a bond may be purchased from a commercial bonding company. The cost of a commercial bond is usually paid from the property of the incapable person.

If the committeeship Order calls for a bond, the committee's authority does not begin until the bond and sureties, if any, are approved by the Master of the Court of Queen's Bench. The bond must then be filed in the Court.

Examples of a Committee bond, the Affidavits to accompany it and a Commercial Bond follow.

File No.

THE QUEEN'S BENCH
MORDEN CENTRE

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: ROBERT JONES

BETWEEN: ELIZABETH JONES

Applicant,

- and -

ROBERT JONES,

Respondent.

---

COMMITTEE BOND

---

Brown & Associates
Barristers and Solicitors
123-4th Street
Anytown, Manitoba
R2J 3K4

Betty Brown
Telephone: 123-4567

Solicitors for the Applicant

THE QUEEN'S BENCH
MORDEN CENTRE

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: ROBERT JONES

BETWEEN: ELIZABETH JONES,

Applicant,

- and -

ROBERT JONES,

Respondent.

**COMMITTEE BOND**

I, ELIZABETH JONES, bind myself and my successors to the Registrar of this Court in the sum of $27,200.00.

**(If Sureties are required, the following paragraph is included and substituted for the above)**

WE, ELIZABETH JONES, FRANK JONES and FRED JONES, jointly and severally bind ourselves and our successors to the Registrar of this Court in the sum of $27,200.00.

THE PURPOSE OF THIS BOND is to ensure that Elizabeth Jones, as committee of the property of the Respondent, performs the duties of committee as set out below.

THE DUTIES OF THE COMMITTEE include the following:

1. To take into custody or control of the committee all property to which the Respondent is entitled or of which the Respondent is possessed and to collect and receive all debts owing to the respondent.

2. To perform the duties that are imposed upon the committee of property under The Mental Health Act.

3. On or before the 1st day of June, 2000, to file in the office of this Court a duly verified true inventory of the whole of the property of the Respondent as required under clauses 83(a) and (b) of The Mental Health Act and in the terms and form prescribed under Rule 72.03 of the Rules of this Court, for approval by the Master.

4. To administer the property of the Respondent according to law; and

5. No later than the 60th day following each anniversary date of the signing of the Order appointing the committee, to render a proper and full account of the administration of the property of the Respondent as of and up to the said anniversary date and thereafter to make a like accounting no later than the 60th day following each anniversary date and upon the death of the Respondent.

Signatures:

Date: _____

_____ _____(seal)
Witness Committee

Date: _____

_____ _____(seal)
Witness Surety

Date: _____

_____ _____(seal)
Witness Surety

APPROVED:

Date: _____

THE QUEEN'S BENCH
MORDEN CENTRE

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: ROBERT JONES

BETWEEN: ELIZABETH JONES

Applicant,

- and -

ROBERT JONES,

Respondent.

**AFFIDAVIT OF EXECUTION OF BOND**

I, BETTY BROWN, of the City of Anytown, in the Province of Manitoba, Lawyer, MAKE OATH AND SAY:

1. I was present and did see the bond, a true copy of which is attached and marked as Exhibit "A" to this Affidavit, signed and sealed by Elizabeth Jones, Frank Jones and Fred Jones, the parties named in the attached bond as sureties.

2. I know the parties named in the attached bond and that they are each of the full age of eighteen years.

3. The attached bond was signed and sealed on December 1, 1999 at the City of Anytown, in the Province of Manitoba by the persons named in the bond as sureties.

4. I signed the attached bond as a witness to the signatures of the persons named in the bond as sureties.

SWORN before me at the City of Anytown, in the Province of Manitoba, this 1st day of December, 1999.

_____

_____
A Notary Public in and for the Province of Manitoba.

THE QUEEN'S BENCH
MORDEN CENTRE

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: ROBERT JONES

BETWEEN: ELIZABETH JONES,

Applicant,

- and -

ROBERT JONES,

Respondent.

**AFFIDAVIT OF JUSTIFICATION BY SURETY/SURETIES**

1. WE, FRANK JONES, of the City of Winnipeg, in the Province of Manitoba, Teacher, and FRED JONES, of the City of Winnipeg, in the Province of Manitoba, Doctor, severally make oath and say that we are the proposed sureties on behalf of the proposed committee of the property of the Respondent in the within bond for the faithful administration of the property of the Respondent.

2. I, FRANK JONES, make oath and say:

(a) that my residence and occupation are correctly stated above and that the value of the property that I own, including any equitable interest that I have in property, is more than $27,200.00 over and above all encumbrances or charges against such property and over and above allowance for the payment of my just debts and every sum for which I am now bail or for which I am liable as surety or endorser or otherwise; and

(b) that I am of the full age of 18 years.

3. I, FRED JONES, make oath and say:

(a) that my residence and occupation are correctly stated above and that the value of the property that I own, including any equitable interest that I have in property, is more than $27,200.00 over and above all encumbrances or charges against such property and over and above allowance for the payment of my just debts and every sum for which I am now bail or for which I am liable as surety or endorser or otherwise; and

(b) that I am of the full age of 18 years.

The above named sureties were sworn before me, at the City of Anytown, in the Province of Manitoba, this 1st day of December, 1999

Signature of surety

Signature of surety

Signature
A Notary Public in and for
the Province of Manitoba.

THE _____ COMPANY
OF NORTH AMERICA

BOND NO. 12345 BOND AMOUNT: $250,000.00

**COMMITTEE BOND**

IN THE MATTER OF ROBERT JACKSON, of the
CITY OF WINNIPEG , MANITOBA

AND IN THE MATTER OF THE MENTAL HEALTH ACT,
R.S.M...

KNOW ALL MEN BY THESE PRESENTS

THAT I, GEORGE BLACK, of 123-45th Street, WINNIPEG, MANITOBA
and

THE _____ COMPANY OF NORTH AMERICA, Surety, are jointly and severally bound unto the MASTER OF THE QUEEN'S BENCH WINNIPEG CENTRE, in the sum of TWO HUNDRED AND FIFTY THOUSAND-----00/100 DOLLARS ($250,000.00) to be paid to the said Master; for which payment well and truly to be made, We bind ourselves for the whole, our heirs, executors and administrators, firmly by these presents and the said Company itself, its successors and assigns, binds itself for the whole firmly by these presents.

SEALED with our seal and the Surety affixes its Corporate Seal and the hand of its Attorney-in-Fact.

THE CONDITION OF THIS OBLIGATION is such that, if the above named Committee of all the property of Robert Jackson, of the CITY of WINNIPEG, Manitoba, does, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all the property of the said Robert Jackson which has or shall come into the hands, possession or knowledge of the said Committee or into the hands or possession of any other person or persons for them and the same so made does exhibit or cause to be exhibited to the Master of THE QUEEN'S BENCH, WINNIPEG, MANITOBA, when thereunto lawfully required, and the same property, and all other property of the said Robert Jackson, which at any time shall come into the hands or possession of the said Committee or into the hands or possession of any other person or persons for them, does well and truly administer according to law, then the above obligation shall be void, otherwise the same shall be and remain in full force and effect.

DATED the _____ day of , 1999.

SIGNED, SEALED AND DELIVERED
in the Presence of:

_____ _____
Witness George Black

_____
The _____ Company of North America

_____ _____
Attorney-in-Fact

## CHAPTER VII

## FILING THE INVENTORY

One of the first duties of a committee is to prepare and file in the Court an inventory or list of all the incapable person's assets. The committeeship Order will usually indicate when the inventory must be filed (eg. within one month or six months after the Judge signs the Order). If the Order does not specifically say so, the inventory must be filed within 6 months of the committee's appointment.

If any property, debts or liabilities are discovered after the inventory is filed, a revised inventory must be filed with the Court.

The inventory must be in a particular form and must have with it an affidavit signed by the committee. Examples of the affidavit and inventory follow this chapter.

**What to Include**

The initial inventory is a complete list of all assets, debts and liabilities of the incompetent person at the beginning of the committeeship. It includes assets in which the person has an interest, such as jointly held property.

Examples of the types of assets to include are:

(1) real estate (homes, cottages, farms, mines and mineral interests, commercial land or buildings).

(2) deposits at banks, trust companies, credit unions, mortgages, loans or other debts owing to the person.

(3) investments, including treasury bills, bonds, investment certificates, stocks, mutual funds, etc.

(4) tax sheltered assets, including Registered Retirement Savings Plans, Registered Retirement Income Funds, annuities, pensions.

(5) life insurance policies (owned by the incapable person on his or her life, or the life of someone else).

(6) personal effects, including furnishings, jewellery, vehicles, machinery, artwork, etc.

(7) interests in the estate of a deceased person or a trust.

(8) interests in legal actions that have not yet been settled (eg. a claim for damages as a result of a car accident. For the purpose of the inventory, these are usually valued at $1.00 prior to settlement).

Examples of the types of debts and liabilities to include are:

(1) mortgages owed by the person

(2) bank loans

(3) credit card debts

(4) personal loans payable to another person

(5) potential liability in outstanding legal actions (eg. possibility of damages being payable to another person as a result of an accident).

The above list of assets and liabilities is not complete, but illustrates the types of items to be included.

The inventory should include values of the assets. This allows the Master of Court of Queen's Bench to compare values when reviewing the accounts at a later date. If the actual value is not known, an estimate may be included. The inventory should identify clearly those values, which are estimates only.

If an estimate is included, attempts should be made to make it as accurate as possible. If the asset in question is later sold, and the selling price is totally out of line with the estimate, the committee will be required to explain the discrepancy to the Master.

When arriving at an estimated value, the committee might take into account advertisements for sale of similar assets. Dealers in the type of items in question might provide an estimate. Real estate agents might provide free or inexpensive estimates of value of real property.

Joint bank accounts require careful consideration. The committee must determine whether the assets in the joint account really belong to both (or all) joint holders or only to one. It is not uncommon for people to name another person as a joint account holder for convenience. The joint account holder has access to the account to help with banking but has no personal interest in the money. In this case, the committee should cancel the joint holder's signing rights, and include the full value of the account in the inventory.

In other cases, however, the account is the shared property of the joint holders. This is often the case when the joint holders are spouses. In this case, it may be reasonable to divide the account equally between the joint holders.

If there is any question about ownership of a joint account, it should be raised in the application for committeeship and addressed in the committeeship Order.

THE QUEEN'S BENCH
BRANDON CENTRE

| | |
|---|---|
| IN THE MATTER OF: | Section 71 of The Mental Health Act, S.M. 1998 c.36 |
| AND IN THE MATTER OF: | MARY SMITH |
| BETWEEN: | JOHN SMITH, Applicant, |
| | - and - |
| | MARY SMITH, Respondent. |

**AFFIDAVIT OF INITIAL INVENTORY**

I, JOHN SMITH, of the City of Winnipeg, in the Province of Manitoba, Manager, make oath and say:

1. I am the committee of the property of the Respondent, being so appointed by the Order of the Honourable Mr. Justice Jones made on December 5, 1999 in this proceeding.

2. Attached and marked Exhibit "A" to this Affidavit is a true inventory of the whole of the property of the Respondent, setting out the assets, liabilities and income of the property, so far as they are known to me.

3. This initial inventory is as of December 5, 1999.

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this 30th day of December, 1999.

_____

_____
A Notary Public in and for
the Province of Manitoba.

_____
APPROVED:

Date: _____

_____
Master

## INITIAL INVENTORY

EXHIBIT "A" TO THE AFFIDAVIT OF JOHN SMITH
SWORN THE 30TH DAY OF December, 1999.

| 1. ASSETS: | | VALUE |
|---|---|---|
| Real Estate: | 151-2nd Street, Anytown, Manitoba | *$60,000.00 |
| Vehicles: | 1991 Dodge Dart, Serial #123456 | *$ 7,000.00 |
| Bank Accounts and cash on hand: | Bank of Nova Scotia, Anytown Branch, Acct.#4567-80 | $ 1,026.00 |
| R.R.S.P.'s: | Bank of Nova Scotia R.R.S.P. #6789 | $ 1,000.00 |
| Household furniture, Appliances, etc.: | Household furnishings, kitchen appliances | *$ 2,000.00 |
| Stocks and bonds: | Canada Savings Bonds, 1992 series. In safety deposit box, Bank of Nova Scotia, Anytown Branch | $10,000.00 |
| Monies owed to Respondent: | $500.00 owed by Bob Smith, loan made June 1, 1985. No interest | $ 500.00 |
| Life Insurance: | London Life, policy #9890. Beneficiary - Bob Jones. (Cash surrender value) | $ 1,050.00 |
| Other: | None. | |
| | | $82,576.00 |

*Indicates estimated value

| 2. LIABILITIES | Creditor | Balance Owing |
|---|---|---|
| Mortgage: | none | |
| Bank loans: | none | |
| Finance Company loans: | none | |
| Department store accounts: | Eatons | $ 250.00 |
| Credit cards: | Mastercard | $ 300.00 |
| Other (specify): | none | |

| 3. INCOME Source | Amount | Frequency |
|---|---|---|
| Old Age Pension | $ 450.00 | monthly |
| Canada Pension | $ 450.00 | monthly |
| Great West Life Pension | $ 450.00 | monthly |

## CHAPTER VIII

## DUTIES AND POWERS OF THE COMMITTEE

### A. Committee of Property

The duties of the committee have already been referred to in Chapter V at page 6..

#### 1. General Duties

Generally, the committee's sole duty is to the incapable person. A committee is a trustee and must act reasonably, with honesty , integrity, and in good faith for the benefit of the incapable person.

The standard of care expected for a committee in making investments is contained in The Trustee Act, R.S.M. 1987 c.T160, section 68(2). That section is as follows:

> ***Standard of care.***
> ***(68(2)*** *Subject to any express provision of the will or other instrument creating the trust, in investing money for the benefit of another person, a trustee shall exercise the judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others.*

The committee is bound by and must obey the terms of the committeeship Order as well as the provisions of The Mental Health Act governing committees.

He or she must avoid placing himself or herself in a position of conflict with the incompetent person. For example, he or she cannot use the person's assets for his or her own benefit or the benefit of other persons. The committee cannot borrow money from the person nor lend money on the person's behalf without Court approval. Similarly, gifts may not be made without the approval of the court.

Section 84 of The Mental Health act sets out how the committee must provide for the incapable person's needs. Subject to any conditions imposed by the Judge in the committeeship Order, expenditures are to be made in the following priority:

(a) expenditures that are reasonably necessary for the incapable person's support, education and care;

(b) expenditures that are reasonably necessary for the support, education and care of the incapable person's dependants;

(c) expenditures that are necessary to satisfy the incapable person's other legal responsibilities.

In determining how to properly comply with the above requirements, the committee must take into account the following rules:

(a) the value of the person's property, his or her accustomed standard of living and that of any dependants, and the nature of any other legal obligations (e.g. debts or liabilities) that he or she may have;

(b) expenditures for dependants may only be made if there is sufficient property to provide for the incapable person's needs. Please note however, that if there is a Court Order providing for maintenance payments to dependants, and the incapable person's resources do not allow the committee to meet the obligation, an application to Court to vary the Order will be necessary;

(c) expenditures necessary to satisfy other legal obligations may only be made if there is sufficient property to provide for the needs of the incapable person, and his or her dependants.

It is the committee's duty to manage the incapable person's property in such a way as to respect the above rules, while ensuring that his or her long term needs are provided for adequately.

If any questions arises as to how to comply with the above rules, they should be referred to the committee's lawyer for assistance.

The committee must open and maintain a separate account in a bank, trust company or credit union. The account should be in the committee's name in trust for the incapable person. The committee must never combine or mix the incapable person's money with his or her own, or with that of another person.

The committee must properly and diligently manage the person's assets and must keep accurate and up to date records of all transactions. These should be supported by bank and investment statements, receipts and invoices where appropriate. A ledger book should be maintained where all transactions are recorded.

## 2. Specific Transactions

### A. Section 80 v. Section 81 powers.

The Mental Health Act sets out what powers a committee of property has. These powers are divided into two groups.

1. Powers that may be exercised by a committee by virtue of his or her appointment. Court approval is not necessary to exercise these powers. They will be referred to as "Section 80 powers" as they are listed in Section 80(1) of The Mental Health Act. They are as follows:

(a) receive, deposit and invest money;

(b) purchase, sell, dispose of, encumber or transfer personal property (as opposed to real property) valued at less than $10,000.00;

(c) transfer property held in trust by the incapable person to the person beneficially entitled to it;

(d) execute any document necessary to comply with *The Homesteads Act*;

(e) begin, carry on, settle or defend any legal claim or proceeding respecting the incapable person's property;

(f) draw, accept and endorse bills of exchange and promissory notes and endorse bonds, debentures and other negotiable instruments and securities and assign certain legal rights;

(g) give or receive a notice that relates to property on the person's behalf;

(h) grant or accept a lease of real property for a term not exceeding 3 years;

(i) consent to the transfer or assignment of a lease, if required;

(j) make periodic payments for the maintenance of the incapable person; and

(k) perform a contract entered into by the person before he or she became incapable.

2. Powers that may be exercised only with express court approval. These powers will be referred to as "Section 81 powers" as they are listed in Section 81(1) of The Mental Health Act. They are as follows:

(a) purchase, sell, dispose of, encumber or transfer personal property valued at $10,000.00 or more;

(b) purchase, sell, dispose of except by lease, mortgage, encumber or transfer real property;

(c) grant or accept a lease of real property for more than 3 years;

(d) exchange or partition property or give or receive money for doing so;

(e) surrender or accept a surrender of lease;

(f) carry on the incapable person's trade or business;

(g) exercise a power or give a consent required for the exercise of a power on behalf of the person;

(h) exercise a right or obligation to elect on behalf of the person;

(i) settle a debt owing to or by the person;

(j) make donations, gifts or loans; and

(k) dispose of onerous real property.

The Judge may impose any conditions or restrictions on any of the powers in Section 80 or 81 that are considered appropriate.

It is important to note if one or more of the "Section 81 powers" is required, it is necessary to apply to the Court for authority. This may be done at the same time as the original committeeship application or at a later date.

If a request is made for "Section 81 powers", the reason for the request must be specifically stated in the material filed with the Court. It is generally not sufficient to request such powers simply to avoid the expense of a future application to Court.

If the need for one or more "Section 81 powers" arises after the committee is appointed, the request is made by filing a Notice of Motion and explanatory Affidavits in Court. Usually, the services of a lawyer are required to do this. The Court usually orders reasonable legal fees for the motion to be paid from the estate of the incapable person.

It may seem costly and time consuming to have to return to Court to request additional powers. However, this requirement is intended to protect the interests of the incapable person. It ensures that major assets, such as land and houses, are dealt with properly and the incapable person receives the maximum benefit from any transaction.

The most common "Section 81 power" requested is the authority to sell a home in which the incapable person has an interest.

In deciding whether to sell the property, the committee should consider the following:

(1) will the person be able to remain in or return to the home to live?

(2) does the person need the proceeds of sale to maintain himself or herself or his or her dependents?

(3) do dependents live in the home?

(4) has the person left the property to someone in a Will?

(5) can the person afford to maintain the home?

(6) would it be better for the person to rent the property?

If a committee intends to sell real property, the following important points should be noted:

(1) before listing the property for sale, at least two independent opinions of value should be obtained. This ensures there is sufficient information to arrive at the best listing price;

(2) the property should be listed for sale prior to applying to Court for approval. Once an acceptable offer is received, the whole package of the offer and evidence of value can be provided to the Court;

(3) when the offer is accepted by the committee, a statement should always be included to the effect that the offer is accepted "subject to Court approval". This prevents the committee from being held personally liable for damages if, for some reason, the Judge does not approve the sale;

(4) the committee should not allow the purchasers to move into the property or take possession until after the Judge approves the sale. If the Judge does not approve it, it is very difficult to get people out of the property.

If the decision is made to sell the property, the Court will require the following information before approving the sale:

(a) a copy of an offer to purchase the property, accepted by the committee, or proposed committee, as the case may be;

(b) two independent appraisals or opinions of value from professional real estate appraisers or realtors;

(c) evidence that the incompetent person no longer requires the home as a residence.

## B. Settlement of Legal Claims

In the course of acting as committee for a person, it may become necessary to take or defend legal action on the person's behalf. A committee of property appointed by the Court may do so, as long as the legal action pertains to the person's property. This would include such things as:

(1) an interest in an estate of a deceased person;

(2) prosecuting or defending an accident claim where damages are claimed by or against the person;

(3) any action relating to an interest in property;

(4) family law proceedings relating to division of property, or payment of maintenance; and

(5) actions relating to recovery of property.

These are examples, but there may be many other types of law suits affecting the property of the incapable person where a committee may become involved.

A committee of property may not represent the person's interests in actions or Court proceedings that do not relate to the person's property. Only a committee of property and personal care may do so.

If a committee settles a claim on an incapable person's behalf, an application must be made to Court for approval of the settlement. This applies whether the incapable person is the plaintiff or defendant, even if no formal proceedings have been started in Court.

The purpose of this requirement is to ensure the incapable person's rights in the proceedings have been protected and a reasonable settlement has been reached.

In an application to Court to approve a settlement, the following material must be provided:

(1) an Affidavit from the committee, setting out the facts of the case, the details of the settlement and the committee's position regarding the settlement;

(2) an Affidavit of the committee's lawyer setting out the lawyer's position with regard to the settlement; and

(3) a copy of the settlement agreement if any.

Every application for approval of a settlement by a committee must be served on the Public Trustee at least 10 days before the hearing.

At the time of service, a fee is payable to the Public Trustee to cover the costs of the Public Trustee's review of the case. The fee is calculated as follows:

(1) where the damages payable are $1,000. to $10,000 .....$ 50.00;

(2) where the damages payable are $10,001. to $45,000 .....$ 100.00;

(3) where the damages payable are $25,001. to $50,000 .....$ 200.00;

(4) where the damages payable are $50,001. to $100,000 .....$ 300.00;

(5) where the damages payable are greater than $100,000 .....$ 300.00; plus $10.00 for each $10,000. or portion thereof over $100,000. to a maximum fee of $500.

The Public Trustee's role is to ensure the settlement is reasonable and in the interests of the incapable person. The Public Trustee will look at the following:

(1) whether the material is complete and sufficient information is included.

(2) whether the assessment of fault (if applicable) is appropriate.

(3) whether the amount of the settlement is reasonable under the circumstances, taking into account other similar cases.

(4) whether the legal fees to be charged to the incapable person by the lawyer representing the committee are reasonable.

If the Public Trustee has no concerns about the settlement, a letter to that effect will be sent to the committee's lawyer.

If the Public Trustee does have concerns that cannot be resolved with the committee's lawyer, the Public Trustee may appear in Court to advise the Judge of the concerns.

Once the settlement is approved, any money payable to the incapable person will be paid to the committee. This may necessitate an increase in the value of the bond and sureties, if any, to reflect the increase in the value of the person's estate.

### 3. Things to Do

A list of things a committee of property should do upon being appointed as committee is as follows:

(1) Keep all funds in a separate account or accounts. If the person had a joint account, this should be closed and the person's share kept separately.

(2) Collect and arrange for safekeeping of important documents such as wills, insurance policies, titles to land, records, etc.

(3) Ensure personal property is safe and kept in a secure place.

(4) If vacant real property is being maintained, make sure it is secure, water is turned off, etc. and that it is inspected as required to maintain insurance coverage.

(5) Arrange for insurance on real and personal property.

(6) Apply for all applicable pensions or benefits (eg. Workers Compensation, Criminal Injuries Compensation, Canada Pension, Old Age Pension, Guaranteed Income Supplement, Veterans Allowances, Unemployment Insurance Benefits, Social Allowances Benefits, etc.).

(7) Collect income tax records and file returns. Pay taxes in a timely manner.

(8) Cancel charge accounts.

(9) Notify banks, utilities, post office, Manitoba Health and other relevant entities of the committeeship and change the address for correspondence.

(10) Inquire whether the person has a pre-arranged funeral plan or cemetery plot.

(11) If the person owns a vehicle:

(a) if the person will not be able to use the vehicle in the future, it should be sold;

(b) do not drive the vehicle or allow others to drive it;

(c) apply for an insurance refund after it is sold;

(d) if the person will require the use of the vehicle in the future, make arrangements for proper storage and insurance.

(12) Invest money not needed for immediate maintenance.

(13) If the committee intends to request compensation, he or she should keep accurate records of time spent administering the person's affairs.

Section 79 of The Mental Health Act requires any person (including a financial institution, company, or corporation) who has custody or control of the incapable person's property to provide the committee with any information requested by the committee about the property and to provide the property in question to the committee upon request. This provision will assist the committee to collect in and manage the person's assets.

## 4. Professional Assistance

The committee may not have the background or expertise to manage all of the incapable person's assets and financial affairs on his or her own. It is, therefore, advisable for the committee to seek appropriate professional assistance.

The following is a list of professionals the committee may wish to consult:

(1) Lawyer:

The Committee's lawyer will make the initial Court application.

After the Committee has been appointed, the lawyer may be involved in subsequent Court applications, including accounting to the Court.

The lawyer provides guidance in legal matters related to committeeship.

(2) Accountant

The accountant may handle accounting and record keeping.

He or she may file the tax returns for the incapable person.

The accountant may also provide advice on financial management.

(3) Real Estate Agent or Property Manager

A real estate agent will provide advice on the sale of real estate and act as agent on the sale.

Property managers may be hired to manage premises which are rented from the incapable person. He or she may also be consulted to give an opinion of value of the real estate.

(4) Auctioneer

An auctioneer can provide appraisals of valuable items.

If a decision is made to sell items, an auctioneer can be contacted to conduct the sale.

(5) Social Workers or Counsellors

Social Workers and counsellors can provide advice or assistance regarding various programs or entitlements for the incapable person.

They can also provide counselling for families or advise where such counselling as necessary may be available.

(6) Banks, Trust Companies and Professional Investment Companies

Banks, Trust Companies and Investment Companies may act as professional investors.

They can also assist with financial decisions and provide services and advice regarding investments.

## B. Committee of Both Property and Personal Care

### 1. General Duties

A committee of both property and personal care has all the duties and powers of a committee of property. In addition, the committee has the following powers:

(a) to determine where and with whom the incapable person shall live, either temporarily or permanently;

(b) to consent or refuse consent to medical or psychiatric treatment or health care on the person's behalf if the person is incapable of consenting on his or her own behalf. However, if the person made a valid Health Care Directive while competent that appoints a proxy to make such decisions, or expresses a decision of the person about the proposed treatment or health care, the committee doe not have authority to make the decision;

(c) to make decisions about daily living on the incapable person's behalf. Some examples of decisions about daily living might include deciding whether the incapable person needs care in the home, or whether he or she can go on a trip;

(d) to begin, carry on, settle or defend any legal claim or proceeding that relates to the incapable person. Some examples might include child welfare proceedings, or divorce proceedings involving custody or access to children. Any such actions are subject to approval by the Court, and the provisions set out on page 25 regarding court proceedings involving property apply.

All of the above powers are subject to any terms or conditions that the Judge appointing the committee may wish to impose. Further limitations on the committee's authority are contained in Sections 92 and 93 of The Mental Health Act and are as follows:

1. The committee may not change arrangements for custody or access to a child or commence divorce proceedings on the incapable person's behalf without specific authority from the Court.

2. The committee may not under any circumstances consent on the incapable person's behalf to the following:

(a) medical treatment for the primary purpose of research, if the treatment offers little or no potential benefit to the person. Such treatment must be distinguished from medical treatment that benefits the person, but also provides data for research. This type of treatment may be consented to;

(b) sterilization that is not medically necessary for the protection of the incapable person's health. This would include sterilization of any form that is intended primarily for birth control or hygiene purposes;

(c) removal of tissue for transplant or medical education or medical research;

(d) voluntary admission to a psychiatric facility. A person may only be admitted to a psychiatric facility if he or she is capable of consenting to be admitted voluntarily, or meets the requirements in The Mental Health Act of an involuntary patient;

(e) adoption or guardianship of a child. If the incapable person is a party to adoption or guardianship proceedings, and is not able to participate in the proceedings on his or her own behalf, the decision regarding adoption or guardianship will be made by the Judge.

Although a committee may not consent to the above matters on the incapable person's behalf, it is possible that in some cases, the incapable person will be able to understand the issues, and consent on his or her own behalf. If this is the case, it would be appropriate to have a medical, psychiatric or psychological opinion of the person's ability to consent. This would protect the person, and any individuals involved in providing the treatment or service involved.

## 2. Specific Matters

As with a committee of property, a committee of both property and personal care must exercise his or her powers diligently and in good faith. The committee's duty is always to the incapable person first.

When making decisions for personal care, the committee must always choose the least restrictive and least intrusive course of action that is available and appropriate. When making treatment or health care decisions, the committee must first consider whether the person has expressed wishes on the issue in the past while apparently mentally competent. If so, those wishes must be followed, unless to do so would endanger the physical or mental health or the safety of the person or others. If that would be the case, or if the wishes are not known, the committee must act in what he or she considers to be the person's best interests, taking into account the following:

(1) whether the person's condition will be or is likely to be improved by the treatment;

(2) whether the person's condition will or is likely to deteriorate without the treatment;

(3) whether the anticipated benefit outweighs the risks of the treatment;

(4) whether the treatment is the least restrictive and least intrusive treatment that is available and appropriate.

When making personal decisions about matters other than health care or treatment, the committee must take into account the following considerations:

(1) the person's wishes;

(2) the person's values and beliefs, if the committee does not know the person's wishes and has used reasonable diligence to find out if there are such wishes;

(3) the person's best interests, if:

(a) the committee does not know the wishes, values and beliefs, and has used reasonable diligence to determine them; or

(b) to follow those wishes or values or beliefs would endanger the health or safety of the person or others

### 3. Things to Do

Some of the things a committee for both property and personal care should do in order to make proper personal care decisions are:

(1) find out who the person's physician is and establish contact;

(2) find out if the person has ever made a Health Care Directive, whether naming a proxy or not. If so, review it and provide a copy to the doctor and other relevant persons. Make sure it is relied on by health care professionals when decisions are required;

(3) make inquiries with the doctor, family or friends (and the incapable person if possible) to find out what the person's wishes are concerning health care and other important matters;

(4) if wishes can't be established, make inquiries as to values and beliefs. For example, inquiries might be made with representatives of the person's religious affiliation, who might shed light on the particular values and beliefs of the person or the person's religion;

(5) find out if there are any outstanding legal actions pertaining to issues of personal care. Contact the lawyer involved, and make arrangements for continued representation, if appropriate.

## C. Provisions Respecting All Committees

Any decisions made or actions taken by a committee in accordance with the committeeship Order have the same legal effect as if they were made or taken by the incapable person while competent. Contracts entered into by the committee are binding on the incapable person even after the committee's appointment ends. For example, if a committee enters into a contract to sell the incapable person's car for less than $10,000.00 (the limit at which court approval for sale of personal property is required) but the committee is replaced before the contract is completed, the contract of sale will be binding on the incapable person and any committee or personal representative of the incapable person who is subsequently appointed.

A committee has the power to complete any transaction or contract that the incapable person entered into before becoming incapable. Further, the committee may do anything necessarily incidental to the exercise of any powers given to the committee under The Mental Health Act or the court order.

## CHAPTER IX

## ACCOUNTING BY THE COMMITTEE

The committeeship Order contains a provision requiring the committee to account on a periodic basis for his or her management of the incapable person's financial affairs. This is referred to as "passing the accounts" of the committee. **This provision must be obeyed. Not doing so may be grounds for the Court to remove and replace the committee.**

### A. Procedure

The accounts are reviewed by a Master of the Court of Queen's Bench.

As with the initial inventory, the accounts must be in a particular form.

The accounts are brought before the Master by filing a motion in court. The motion requests an order:

(1) approving the committee's accounts;

(2) approving the amount of any compensation requested by the committee; and

(3) if applicable, approving the legal fees to be paid to the committee's lawyer, either from the original committeeship application or for services provided since then.

The committee must file an Affidavit which provides the following information:

(1) the period of time to which the accounts relate (eg. September 1, 1999 to August 31, 2000);

(2) the names and last known addresses of persons, including creditors, who have an interest in the financial affairs of the person;

(3) details of the account as set out in the following forms:

(a) opening inventory;
(b) statement of monies received;
(c) statement of monies disbursed;
(d) statement of assets sold or realized and assets acquired; and
(e) a reconciliation and closing inventory.

(4) if the committee is requesting compensation, details of the amount requested and the services performed. **(Note: private committees cannot take compensation except as allowed by the Court);**

(5) if approval of legal fees is requested, details of the services performed and the amount sought; and

(6) if the incapable person has died and the accounts are being passed for the final time, the date of death and proof of the appointment of an administrator or executor of the estate (called a personal representative).

Examples of the Motion and Affidavit with the required forms follow.

Copies of all the committee's records, statements, invoices and receipts should be available for inspection should there be any questions about the accounts.

Copies of the motion and affidavit must be sent to the same people who received a copy of the committeeship Order with the exception of The Public Trustee (unless the Court or Master of the Court of Queen's Bench otherwise directs). Those people have the right to go before the Master and express any concerns they may have about the accounts.

If the committee of property dies during the committeeship, the personal representative of the committee's estate is required to pass the accounts of the committee and provide any property and information belonging to the incapable person to the new committee, or as ordered by the Court.

If the incapable person dies during the committeeship, the committee must account and provide any property and information to the personal representative of the person's estate.

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN: JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

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NOTICE OF MOTION
Hearing Date: December 23, 1999

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Brown & Associates
Barristers and Solicitors
123-4th Street
Anytown, Manitoba
R2J 3K4

Betty Brown
Telephone: 123-4567
Solicitors for the Applicant

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN.

BETWEEN: JOAN GREEN,
Applicant,

- and -

RICHARD GREEN,
Respondent.

**NOTICE OF MOTION**

The Applicant, Joan Green, will make a motion before Master Brown on Tuesday, December 23, 1999 at 3:00 p.m. or as soon after that time as the motion can be heard at the Court House, 1104 Princess Avenue, Brandon, Manitoba.

THE MOTION IS FOR:

(a) An Order approving the accounts of the committee;

(b) An Order approving compensation to be paid to the Committee;

(c) Costs

(d) Such other Order as may be just.

THE GROUNDS FOR THE MOTION ARE:

(a) Queen's Bench Rule 72 and the Order of the Honourable Mr. Justice White dated the 2nd day of November, 1997.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) Affidavit of Joan Green sworn November 30, 1999.

Brown & Associates
Barristers and Solicitors
123-4th Street
Anytown, Manitoba
R2J 3K4

Betty Brown
Phone: 123-4567

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN: JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

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AFFIDAVIT OF JOAN GREEN
SWORN THE 30TH DAY OF NOVEMBER, 1999
Hearing Date: December 23, 1999

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Brown & Associates
Barristers and Solicitors
123-4th Street
Anytown, Manitoba
R2J 3K4

Betty Brown
Telephone: 123-4567
Solicitors for the Applicant

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN.

BETWEEN: JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

**AFFIDAVIT OF JOAN GREEN**

I, JOAN GREEN, Retired, of the City of Brandon, in Manitoba, make oath and say that:

1. I am the Applicant herein and as such have personal knowledge of the matters and facts hereinafter deposed to by me except where stated to be based on information and belief, and in which case I do verily believe them to be true.

2. I am the committee of the property of Richard Green pursuant to the order pronounced by the Honourable Mr. Justice White on the 2nd day of November, 1997 and signed on the 15th day of November, 1997.

3. The said Order provided that I was to pass my accounts of the property of the Respondent within 30 days following the first anniversary of the signing of the Order, and within 60 days following each anniversary thereafter, or on the death of the Respondent, whichever event first occurs.

4. I last passed my accounts on or about December 4, 1998 for the period November 2, 1997 to November 1, 1998.

5. I wish to apply for the approval of the accounts of the property of Richard Green for the period November 2, 1998 to November 1, 1999.

6. The Respondent, Richard Green, is now residing at the Brandon Personal Care Home Limited, 100 Brandon Drive, Brandon, Manitoba.

7. I am the sister of the Respondent.

8. The names and addresses of persons who have an interest in the affairs of the Respondent are:

(a) Bill Green, brother, 123-4th Street, Winnipeg, Manitoba, R2Y 3A4 and
(b) Mary Brown, sister, 456-7th Street, Winnipeg, Manitoba, R3X 4B5.

9. Attached hereto and marked as Exhibit "A" to this my Affidavit is the opening inventory of the property of the Respondent as at November 2, 1998.

10. Attached hereto and marked as Exhibit "B" to this my Affidavit is a Statement of Monies Received between November 2, 1998 and November 1, 1999.

11. Attached hereto and marked as Exhibit "C" to this my Affidavit is a Statement of Monies disbursed between November 2, 1998 and November 1, 1999.

12. Attached hereto and marked as Exhibit "D" to this my Affidavit is a Statement of Assets Sold or Realized and Assets Acquired between November 2, 1998 and November 1, 1999.

13. Attached hereto and marked as Exhibit "E" to this my Affidavit is a Reconciliation and Closing Inventory as at November 1, 1999.

14. During the course of my appointment as committee, I have been required to perform the following tasks:

1. preparing income tax returns;
2. paying bills;
3. banking;
4. preparing financial statements for the Court;
5. shopping;
6. ensuring the Respondent's needs are met in the personal care home;
7. attending meetings at the personal care home;
8. consulting with his doctors during recent illness;
9. meeting with the prosthetics specialist for wheelchair modifications.

15. I estimate that in performing the above tasks, I have spent on average 4 hours per week. In addition to the time expended, I have incurred automobile and parking expenses plus other incidental expenses which I have mainly assumed.

16. I would ask that compensation for the committee be approved in the amount of $500.00 per year.

17. I make this Affidavit bona fide.

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this 30th day of November, 1999.

_____
Joan Green

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN:

JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

OPENING INVENTORY
of the property of Richard Green
as of November 2, 1999

**1. ASSETS**

| | |
|---|---|
| Bank accounts/cash on hand: | |
| TD Bank – Chequing Account | $ 8,330.26 |
| Stocks and Bonds: | |
| Canada Savings Bonds (7 x $1,000.00) Maturing Nov. 1, 2006 | $ 7,000.00 |
| Term Deposit: | |
| GIC – Matures Apr. 25, 1999 | $ 40,000.00 |
| GIC – Matures Dec. 31, 1999 | $ 40,000.00 |
| Other: | |
| Car - 1990 Dodge 600 | $ 3,000.00 |
| Great West Life 20 year Annuity | $ 29,000.00 |
| TOTAL: | $ 127,330.26 |

**2. LIABILITIES**

| Liability | Creditor | Balance Owing |
|---|---|---|
| None | | |

**3. INCOME**

| Source | Amount | Frequency |
|---|---|---|
| Canada Pension Plan | $ varies | monthly |
| Old Age Security | varies | monthly |
| Interest | varies | monthly |

SIGNED:

DATE: _____ _____

Committee

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN:

JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

## STATEMENT OF MONIES RECEIVED

| Amount | Date Received | From Whom Received | Explanation | Amount Received as Income | Amount Received as Capital |
|---|---|---|---|---|---|
| $ 11.25 | Nov 10/98 | Hydro | Credit | $ 11.25 | |
| 244.00 | Nov 19/98 | Great West Life | Annuity | 122.00 | $ 122.00 |
| 1,057.97 | Nov 28/98 | G. of Canada | OAS & CPP | 1,057.97 | |
| 18.01 | Nov 30/98 | T-D Bank | Interest | 18.01 | |
| 244.00 | Dec 19/98 | Great West Life | Annuity | 122.00 | 122.00 |
| 1,057.97 | Dec 21/98 | G. of Canada | OAS & CPP | 1,057.97 | |
| 25.14 | Dec 30/98 | T-D Bank | Interest | 25.14 | |
| 3,200.00 | Dec 31/98 | GIC | Interest | 3,200.00 | |
| 244.00 | Jan 01/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 1,059.43 | Jan 27/99 | G. of Canada | OAS & CPP | 1,059.43 | |
| 76.00 | Jan 27/99 | G. of Canada | GST Credit | 76.00 | |
| 32.31 | Jan 31/99 | T-D Bank | Interest | 32.31 | |
| 244.00 | Feb 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 1,059.43 | Feb 24/99 | G. of Canada | OAS & CPP | 1,059.43 | |
| 36.12 | Feb 28/99 | T-D Bank | Interest | 36.12 | |
| 244.00 | Mar 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 1,059.43 | Mar 29/99 | G. of Canada | OAS & CPP | 1,059.43 | |

| Amount | Date Received | From Whom Received | Explanation | Amount Received as Income | Amount Received as Capital |
|---|---|---|---|---|---|
| 42.32 | Mar 31/99 | T-D Bank | Interest | 42.32 | |
| 319.11 | Apr 07/99 | G. of Canada | Tax Refund | 319.11 | |
| 76.00 | Apr 12/99 | G. of Canada | GST Credit | 76.00 | |
| 244.00 | Apr 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 2,800.00 | Apr 25/99 | GIC | Interest | 2,800.00 | |
| 945.13 | Apr 26/99 | G. of Canada | OAS & CPP | 945.13 | |
| 42.92 | Apr 28/99 | T-D Bank | Interest | 42.92 | |
| 244.00 | May 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 945.13 | May 30/99 | G. of Canada | OAS & CPP | 945.13 | |
| 30.94 | May 31/99 | T-D Bank | Interest | 30.94 | |
| 244.00 | Jun 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 945.13 | Jun 28/99 | G. of Canada | OAS & CPP | 945.13 | |
| 27.28 | Jun 30/99 | T-D Bank | Interest | 27.28 | |
| 76.00 | Jul 11/99 | G. of Canada | GST Credit | 76.00 | |
| 244.00 | Jul 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 953.64 | Jul 27/99 | G. of Canada | OAS & CPP | 953.64 | |
| 25.09 | Jul 31/99 | T-D Bank | Interest | 25.09 | |
| 244.00 | Aug 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 953.64 | Aug 29/99 | G. of Canada | OAS & CPP | 953.64 | |
| 23.39 | Aug 31/99 | T-D Bank | Interest | 23.39 | |
| 244.00 | Sep 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 953.64 | Sep 27/99 | G. of Canada | OAS & CPP | 953.64 | |
| 21.72 | Sep 29/99 | T-D Bank | Interest | 21.72 | |
| 76.00 | Oct 18/99 | G. of Canada | GST Credit | 76.00 | |
| 244.00 | Oct 19/99 | Great West Life | Annuity | 122.00 | 122.00 |
| 958.79 | Oct 27/99 | G. of Canada | OAS & CPP | 958.79 | |
| 22.31 | Oct 31/99 | T-D Bank | Interest | 22.31 | |
| 446.25 | Nov 1/99 | G. of Canada | CSB Interest | 446.25 | |
| | | **Sub-totals** | | $ 20,841.49 | 1,464.00* |

**TOTAL MONIES RECEIVED:** **$22,305.49**

*These payments reduce the capital value of the annuity during the accounting period. They are not included as receipts for purposes of the reconciliation.

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN:

JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

## STATEMENT OF MONIES DISBURSED

| Amount | Date Disbursed | To Whom Disbursed | Explanation | Disbursed as Income Expense | Amount Disbursed as Capital |
|---|---|---|---|---|---|
| $ 100.00 | Nov 10/98 | R. Green | Misc. Cash | $ 100.00 | |
| 843.20 | Dec 02/98 | PCH | Per Diem | 843.20 | |
| 2,000.00 | Dec 06/98 | J. Green | Fees (Approved Dec/4/94) | 2,000.00 | |
| 500.00 | Dec 06/98 | J. Green | Court Costs | 500.00 | |
| 843.20 | Jan 02/99 | PCH | Per Diem | 843.20 | |
| 33.17 | Jan 03/99 | T-D Bank | Safety Box | 33.17 | |
| 659.32 | Jan 16/99 | J. D. Blue | Legal Fees | 659.32 | |
| 761.60 | Feb 10/99 | PCH | Per Diem | 761.60 | |
| 843.20 | Mar 03/99 | PCH | Per Diem | 843.20 | |
| 100.00 | Mar 23/99 | R. Green | Misc. Cash | 100.00 | |
| 816.00 | Apr 10/99 | PCH | Per Diem | 816.00 | |
| 100.00 | Apr 12/99 | R. Green | Misc. Cash | 100.00 | |
| 1.40 | Apr 28/99 | T-D Bank | Service Charge | 1.40 | |
| 58.85 | May 02/99 | Accountant | Tax Return | 58.85 | |
| 843.20 | May 04/99 | PCH | Per Diem | 843.20 | |
| 1.40 | May 31/99 | T-D Bank | Service Charge | 1.40 | |
| 816.00 | Jun 15/99 | PCH | Per Diem | 816.00 | |
| 843.20 | Jul 07/99 | PCH | Per Diem | 843.20 | |
| 1,044.70 | Aug 03/99 | PCH | Per Diem | 1,044.70 | |
| 1,011.00 | Sep 07/99 | PCH | Per Diem | 1,011.00 | |
| 1,044.70 | Oct 30/99 | PCH | Per Diem | 1,044.70 | |
| 22.00 | Oct 30/99 | Therapy Services | Medical Costs | 22.00 | |
| 1,011.00 | Nov 01/99 | PCH | Per Diem | 1,011.00 | |
| | | | Sub-Total | $14,297.14 | 0 |

**TOTAL MONIES DISBURSED:** **$ 14,297.14**

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN:

JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

## STATEMENT OF ASSETS SOLD OR REALIZED AND ASSETS ACQUIRED

| DATE | ASSET SOLD OR REALIZED | PROCEEDS | COST | Gain(loss) |
|---|---|---|---|---|
| Feb 26/99 | 1990 Dodge 600 car | $ 2,900.00 | $ 3,000.00 | (100.00) |
| Nov 2/98 to Nov 1/99 | Realization of capital portion of annuity ($122.00 x 12 ) | $ 1,464.00 | | |
| April 25/99 | T-D Bank GIC Matured | $ 40,000.00 | $ 40,000.00 | 0 |
| | TOTAL AMOUNT OF GAIN (LOSS): | | | (100.00) |

## ASSETS ACQUIRED

| DATE | ASSET ACQUIRED | COST |
|---|---|---|
| Apr 25/99 | T-D Bank GIC 1 year term | $ 40,000.00 |
| | TOTAL COST: | $ 40,000.00 |

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 76 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN:

JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

## RECONCILIATION AND CLOSING INVENTORY

of the property of Richard Green as of November 1, 1999

**Reconciliation**

| | | |
|---|---|---|
| 1. | Asset on Opening Date (November 2, 1998) | $ 127,330.26 |
| 2. | Monies received as income | 20,841.49 |
| 3. | Gains (losses) on realizations | (100.00) |
| 4. | Disbursements from income | (14,297.14) |
| 5. | Assets on Closing Date (November 1, 1999): | $ 133,774.61 |

**Closing Inventory**

| | Brief Description of Asset | |
|---|---|---|
| 1. | T-D Bank Chequing Account | $ 19,238.61 |
| 2. | Furniture | nil |
| 3. | Personal Effects | nil |
| 4. | Term Deposits (GIC) | 80,000.00 |
| 5. | Canada Savings Bonds | 7,000.00 |
| 6. | Great West Life Annuity | 27,536.00 |
| Closing Date Value (November 1, 1999): | | $ 133,774.61 |

***NOTE: The value of assets on closing date as indicated in the reconciliation [item 5] should be the same as the total value of the estate in the closing inventory.**

**B. If the Accounts are Approved**

If the Master of the Court of Queen's Bench is satisfied that the accounts are in order, he or she will issue a Report and Order. This document confirms that:

(1) the accounts are approved;
(2) the committee's compensation is set; and
(3) the legal fees, if any, are set.

**C. If the Accounts are not Approved**

If in the course of reviewing the accounts, the Master has concerns that are not satisfied by the committee, the Public Trustee may be notified and asked to review the accounts. The Public Trustee would then become involved and take a position before the Master as to whether the accounts are proper or not. The Public Trustee's role is to represent the interests of the incapable person where there is some question about the committee's actions.

After hearing the position of the committee, the
Public Trustee and any other interested party, the Master would either approve the accounts or not approve them. If the accounts are not approved, a Report and Order would be issued confirming:

(1) that the accounts are not passed; and
(2) ordering that the Report and Order be served on certain persons, including the Public Trustee.

A copy of the Report and Order would also be sent by the Master to the Judge who appointed the committee.

At that time, an interested person, including the Public Trustee could apply to the Court to have the committee removed and replaced.

Examples of a Report and Order approving the accounts follow.

File No.

THE QUEEN'S BENCH
Brandon Centre

IN THE MATTER OF: Section 71 of The Mental Health Act, S.M. 1998 c.36

AND IN THE MATTER OF: RICHARD GREEN

BETWEEN:

JOAN GREEN,

Applicant,

- and -

RICHARD GREEN,

Respondent.

REPORT AND ORDER

HAVING PROCEEDED on the 23rd day of December, 1999 to take, audit and pass the accounts of Joan Green, Committee of the property of the Respondent, for the period from November 2, 1998 to November 1, 1999 and in the presence of Bill Green and after due notice to Mary Brown, who failed to attend, THIS COURT:

1. FINDS AND DECLARES:

(a) That the property in the hands of the Committee on November 1, 1998 had a value of $127,330.26 as of November 1, 1998;

(b) That monies in the amount of $22,305.49 were received by the Committee, whereof $20,841.49 is properly applicable to income and $1,464.00 to Capital;

(c) That the Committee properly paid out and disbursed in the course of administering the property the sum of $14,297.14 whereof $14,297.14 is properly applicable to income expenses and nil to capital payments;

(d) That the value of the property as of November 1, 1999 is $133,774.61.

2. ALLOWS the committee the sum of $500.00 as fair and reasonable allowance in compensation to the Committee for the care, pains, trouble and time expended by the Committee in administering the property from November 1, 1998 to November 1, 1999.

3. ORDERS that the sum of $400.00 be allowed as costs of preparing and passing accounts in respect to the committeeship.

, 1999.

(Name of Judge or Master)

## CHAPTER X

## COMMITTEE'S COMPENSATION

A committee appointed by a Court may be entitled to charge a fee for his or her services. The fee is paid from the property of the incapable person.

Any fees charged by the committee must be approved by a Master of the Court when the accounts of the committee are approved. The Master has the discretion to approve or not approve fees requested by the committee. In deciding whether fees are appropriate, the Master will consider the following:

(1) the time spent and the types of duties and activities performed by the committee;

(2) the complexity of the financial affairs; and

(3) the rate at which fees are charged.

It is important to provide the Master with as much information as possible about how the fee was calculated and the type of work performed by the committee.

The Master will likely approve reasonable fees for services performed. These might include the following:

(1) dealing with financial affairs;

(2) taking the person to appointments, shopping, etc.;

(3) making arrangements for the person's care, etc.; and

(4) looking after property.

It is unlikely the Master will approve requests for compensation for time spent visiting with the person.

Committee's compensation may not be taken prior to approval by the Master. If a committee does take compensation without approval and the Master on reviewing the accounts does not approve it, the committee must repay it with interest. The committee may also be subject to being removed as committee.

## CHAPTER XI

## WHEN DOES A COMMITTEE'S AUTHORITY END?

### A. Incapable person regains capacity

In some cases, a person who has been declared mentally incapable of managing his or her affairs may recover the capacity to do so. A committee is, therefore, no longer necessary and should be removed.

In this circumstance, the committee, or the previously incapable person, should bring a motion before the Court requesting the person be declared capable of managing his or her affairs and removing the committee.

The Court should be provided with Affidavits from two doctors indicating that, in their opinion, a committee is no longer required and the reasons why not.

If the Court agrees, the committee will be removed, and be required to pass his or her accounts before the Master. Alternatively, the previously incompetent person may review the accounts and if satisfied everything is in order, sign a release in favour of the former committee. This procedure does away with the need for a formal passing of accounts before the Master.

If a bond was in place, it should be discharged.

### B. Incapable person dies

The authority of a committee ends upon the death of the incapable person. At that point, the committee is required to account to the personal representative of the incapable person's estate. The committeeship order may also require that accounts be passed on the incapable person's death

### C. Death of Committee, or inability or unwillingness to continue

If a committee dies, a new committee must be appointed. The rules for appointment of a committee apply. It is the duty of the executor or administrator of the estate of the deceased committee to pass the committee's accounts and arrange for transfer of the assets to the new committee.

If the committee becomes unable to continue, or wishes to be removed as committee, he or she must apply to Court to be removed and to have some other person appointed in his or her place. Again, the rules for the appointment of a committee apply. The former committee must pass his or her accounts.

**D. Removal or Replacement of Committee**

Any person may apply to the Court to have a committee removed or replaced. Some examples of circumstances when the Court might remove or replace a committee might be:

(1) where the accounts are not approved by the Master;

(2) where the committee has not complied with the provisions of the committeeship order;

(3) where the committee has not acted in the best interests of the incapable person, or is in a conflict of interest with the person; and

(4) where the committee has neglected his or her duties to the person, or acts improperly.

(5) where the committee is unable or unwilling to continue.

(6) where the incapable person has regained his or her capacity and no longer requires a committee.

An application to remove a committee may be made by an interested family member or friend, or by the Public Trustee. It is generally accompanied by an application to appoint a new committee.

If the committee is removed, he or she must pass his or her accounts. If there has been mismanagement of the assets resulting in loss to the incompetent person, the former committee or the sureties, if any, may be called upon to compensate the person for his or her loss.